



W.P.No.1405 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 22.03.2024

ORDER PRONOUNCED ON: 19.07.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

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BHEL Mazdoor Sangam (BMS),
Rep. by its General Secretary,
G.Sankar,
Regn. No. 494/TRI
Opposite to No. 79 Building
Bharat Heavy Electricals Limited,
Tiruchy- 620 014.

... Petitioner

vs.

1.The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
1st Floor 'B' Wing,
ShastriBhavan, Chennai-6.

2.The Executive Director,
M/s. Bharat Heavy Electricals Limited,
Tiruchirappalli-620 014.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ and in particularly **Writ of Certiorarified Mandamus** calling for the entire records in pursuant to the I.D.No.113 of 2014 award dated



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13.04.2016 passed by the 1st Respondent and quash the same and consequently direct the 2nd Respondent to pay the revised pay progression with consequential benefits to those employees, who were recruited against advt. Nos. 276, 277(i), 277(ii) and 278 after completion of one year period as per the 2nd Respondent's advertisement and the reference No. L- 42011/101/2014-IR (DU) dated 27.11.2014, by the Central Government, Ministry of Labour and Employment to the 1st Respondent.

For Petitioner : Mr.M.R.Venkatesh
for M/s. MV.Siddharth
S.Gowtham

For Respondent : R1 – Tribunal Court
R2 - M/s.A.V.Arun, Ganesh, V.Aranala

* * * * *

ORDER

The writ petition is filed challenging the Award passed in I.D.No.113 of 2014 dated 13.04.2016 to quash the same and consequentially to direct the 2nd respondent to pay the revised pay progression with consequential benefits to those employees who were recruited against advertisement Nos. 276, 277 (i), 277 (ii) and 278 after completion of one year period as per 2nd respondent's advertisement and the reference No. L- 42011/101/2014-IR (DU) by the Central Government, Ministry of Labour and Employment to the 1st respondent.



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2. The petitioner Union is affiliated to Bharatiya Mazdoor Sangh and All India Federation – Public Sector Employees National Confederation. The respondent, BHEL is a Government company and is a major integrated power plant manufacturer in the world and is having 17 manufacturing units across the country including the respondent herein. The respondent unit was established in 1963. The workers of BHEL are categorised into grades starting from A1/B1 to A12/B12. According to the petitioner the fixation of pay scales, wages and other service conditions and personnel policies are arrived at in the Joint Committee, the Apex Body, representing the Trade Unions from various Units with their leaders on one side and the representatives of the Management on the other side. As per the minutes of the first Joint Committee Meeting the terms of reference of the Committee are spelt out. In the year 1980 a policy was introduced regulating the term of Temporary Employee Artisans (TEA's) herein after referred to as TEA's for absorption as one year skilled/temporary employment (ie.) 6 months on daily rated wages and 6 months on consolidated wages. The said policy was in force till 1998. In 1998 the period of temporary employment for absorption as Artisan Grade III was lengthened to 2.5 years with 1.5 years on daily rate wage and 1 year



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on consolidated wage. From 1998 to 2005 there was no recruitment of TEA's. In 2005 three notifications were issued for recruitment of Artisan Grade IV (Temporary Employment). The first employment notification was issued in Employment Notification No.276 for recruitment of 90 TEA's Grade IV. In the said notification the period of temporary employment was shown as 1 year, but subsequently while issuing the letters for written examination and in the offer of appointment the period of temporary employment was changed to 2.5 years. (There is a dispute with regard to this aspect between the parties and the same will be discussed later in the Judgment) The first batch of TEA's joined from 05.09.2005 onwards. In the second and third employment notification Nos.277 and 278 for recruitment of 250 and 350 TEA's respectively, the period of temporary employment was shown as 2.5 years. The Employment Notification No.277 was challenged before the Madurai Bench and based on the Judgment dated 27.10.2006 of the Madurai Bench of this Court the entire selection ended except for the selection of 9 candidates who were selected under the physically challenged quota. The petitioner hence refers to the said selection as 277(i). Based on the earlier notification No.276, re-examination was conducted and the selected candidates, about 250 of them joined from 29.01.2007 onwards. This



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selection is referred to as Employment Notification 277(ii). Under Employment Notification Nos.278, 350 candidates were selected and they joined from 16.04.2007 onward. For all the selected candidates under the aforesaid 3 notifications office orders were issued stating that they were eligible for casual and earned leave as per the leave rules of the company.

3.As the period of temporary employment of 2.5 years notified under the above notifications was found to be too long, representations were made to the Management to reconsider the same. In pursuance of the said representations the Management issued circular dated 01.04.2008 restoring the period of temporary employment to 1 year (i.e.) pre 1998 position. The said circular also provided for one time dispensation of one year service weightage for past service at the time of next promotion. Disturbances in the inter se seniority between the various batches of Artisans occurred after the above circular and so the Management issued circular dated 12.02.2009 providing notional absorption for temporary employees upon completion of one year as temporary employee, but no monetary benefits were extended. Though pay protection and promotions were given actual monetary benefits were given only w.e.f. June 2008. On 30.12.2009 a



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Memorandum of Agreement was signed for revision of pay scales of the workers of BHEL retrospectively from 01.01.2007. The petitioner states that the payment of arrears was effective from the actual date of absorption for those who joined on or after 01.01.2007. Also as per circular dated 12.02.2009 such of those TEA's who were absorbed in the regular establishment on or after 01.01.2007 were eligible to get arrears from the actual date of completion of 1 year temporary period. The petitioner therefore states that the TEA's recruited under the said 3 notifications were entitled to wage arrears from the date on which they were absorbed in regular establishment. The TEA's recruited under the said 3 notification were entitled to eligible earned leave and casual leave as per rules of the Company but they were given 7 days casual leave during the entire temporary period and and one day non-encashable earned leave for every 20 working days. No other leave benefits were given to them. The petitioners therefore claimed leave benefits as per BHEL leave rules upon absorption as regular employees on completion of 1 year, carry forward facility for unavailed leave and equivalent wages for the leave which could not be carried forward. As the respondent failed to accede to the petitioner's demand for arrears of wages from their actual date of completion of 1 year TEA period, and for leave as per company's leave rules, the



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petitioner raised the industrial dispute in ID No.113 of 2014. The Labour Court vide its Award dated 13.04.2016 dismissed the ID and hence the above writ petition is filed challenging the same.

4.The respondents denied all the contentions raised in the claim petition by the petitioner. The respondent first of all challenged the locus of the petitioner to raise the dispute on the ground that the petitioner did not command membership from substantial section of the workmen of the respondent. The respondent denied that the policy decisions with regard to the points mentioned in the terms of reference to the Joint Committee had to be decided only with the approval of the Joint Committee. The respondent stated that the policy decision of the Management to change the period of temporary employment of TEA's from 1 year to 2.5 years was taken in pursuance of the decision of the HR Heads meeting. Referring to the conditions stipulated in the 3 employment notifications and the recruitments thereof, it was stated that the petitioner's members' having accepted the offer of appointment could not question the same. It was stated that the circular dated 01.04.2008 which was superseded by circular dated 12.02.2009 was issued to reconcile the disturbances that occurred in the inter-se seniority of the batches of Artisans and the same put an end to all related issues once and for all.



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It was further stated that the issue raised by the petitioner was not an issue before the Joint Committee Meeting held on 30.12.2009. The said meeting related to revision of pay scales of workers effective from 01.01.2007. It was stated that the rights of the petitioner were restricted by the special dispensation provided by the circular dated 12.02.2009 and therefore the pay fixation as per the Joint Committee meeting held on 30.12.2009 followed by the Circular dated 06.02.2010 did not entitle the members of the petitioner Union for arrears. On applicable leave rules it was stated that the recruitees under employment notifications 276, 277 and 278 were governed by the policy note dated 29.10.2005 with regard to their leave entitlements. The respondent therefore prayed for the dismissal of the ID.

5.The Labour Court on the basis of the oral and documentary evidence filed by the parties dismissed the ID inter alia, on the grounds that the decision to enhance the period of temporary employment by the respondent was a policy decision and hence it was not necessary to get the approval of the Joint Committee as contended by the petitioner, that the TEA's having accepted the terms and conditions of employment and joined duty were estopped from challenging the



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said terms and conditions, that the contention of the petitioner that the circular dated 12.02.2009 had done away with the benefits that were provided under the earlier circulars was untenable because even under earlier circulars there was no intention to give any financial benefit, that the petitioner could not claim monetary benefit on the basis of notional absorption or on the basis of wage revision and that the petitioner was also not entitled to claim leave benefits on the same analogy of not being entitled to arrears of wages as they were only notionally absorbed. On the issue of locus the Labour Court held that as the respondent failed to raise the issue in its written arguments, the contention was deemed to be given up.

6.The learned counsel for the petitioner submitted that 750 TEA's were affected by the illegal change in policy. The learned counsel referring to the terms of reference of the Joint Committee particularly clauses 7 and 11 submitted that the Internal Office Memorandum (IOM) dated 18.04.1998 was illegal in as much as the change in policy was an unilateral decision without the approval of the Joint Committee. The learned counsel further submitted that the Labour Court failed to note that the employees who are recruited before 1998 and after 2008 had to



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undergo only one year temporary service while the TEA's recruited under the notification Nos.276, 277 and 278 were alone made to suffer due to the unauthorised unilateral policy decision of the respondent. The learned counsel further submitted that under the MOA (Memorandum of Agreement) dated 30.12.2009, the revision of wages was made retrospectively from 01.01.2007. The circular dated 06.02.2010 provided revised scales of pay to those employees, who were recruited on or after 01.01.2007 under Clause 7.1, but the Labour Court on an erroneous view held that the TEA's were not entitled to the arrears of wage revision. The learned counsel referring to the Notification No.276 dated 22.05.2005 submitted that in the notification, the temporary period was stipulated as one year but the same was subsequently corrected in the communication calling for written examination and in the offer of appointment. The learned counsel submitted that the change in temporary period of employment from one year to 2.5 years was without any justification and legal backing. The learned counsel further submitted that consequent to the Memorandum of Agreement dated 30.12.2009 revising the wages with effect from 01.01.2007 followed by the circular dated 06.02.2010 the TEA's were entitled to wage arrears from the date of completion of one year as temporary employees. The learned counsel further submitted that the



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wage agreement applies to the employees covered under notification 276, 277, 278 and the denial of the same on the basis of the circular dated 12.02.2009 was erroneous and unsustainable. It was also submitted that the circular dated 12.02.2009 and IOM dated 18.04.1998 were not sustainable in the light of clause 7 of the MOA dated 30.12.2009. The learned counsel further submitted that the leave rules of BHEL also applied to temporary employees and hence, the petitioners were entitled to leave benefits as per BHEL Rules. The learned counsel therefore submitted that the award of the Labour Court was unsustainable and the same deserved to be set aside and the writ petition accordingly allowed.

7. The learned counsel for the respondent on the other hand submitted that the period of temporary employment was a policy decision and was always decided by the Management and never by the Joint Committee. The learned counsel submitted that the decision on the period of temporary employment being a policy decision of the Management the Joint Committee had no role to play in the said policy decision. As regards the employment notice No.276 the learned counsel stated that the error in the notice stipulating one year as temporary employment period was rectified even during selection process, by informing all



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the candidates who appeared in the written test through communication and also in

the offer of appointment letter. The learned counsel further submitted that

consequent to the reduction of the period of temporary employment from 2.5 years

to 1 year, IOM's (Internal Office Memorandums) were issued on how to treat the

temporary employees. As representations were received from the employees that

the inter-se seniority between the different batches of artisans was disturbed due to

the reduction of the temporary period of employment the Corporate circular dated

12.02.2009 was issued superseding the earlier IOM's. It was decided in the said

circular to give notional absorption to employees who joined after 18.04.1998 as

Artisans Grade IV on completion of 1 year temporary service with the monetary

benefits effective from June, 2008 based on the pay fixation and progression. In

the MOA dated 30.12.2009, the respondent agreed to provide 2.5 increment (i.e.

7.5% on the revised pay) as special one-time dispensation to all the employees

regularized from 01.01.2007 to 31.12.2009. A wage revision circular dated

06.02.2010 was also issued providing for payment of above 2.5 increment (7.5%

on revised pay). The learned counsel for the respondent submitted that the

petitioner's members' were covered by Clause 7.2 of the MOA dated 30.12.2009

and the circulars dated 12.02.2009 and the wage revision circular dated



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06.02.2010 and hence the claim for arrears of wages from 01.01.2007 on the basis

of the memorandum of agreement dated 30.12.2009 on wage revision was misplaced. The learned counsel on the applicability of the BHEL leave rules on the date of appointment as temporary employees submitted that BHEL leave rules were not applicable to temporary employees. It was submitted that leave entitlement for temporary employees under the BHEL rules was based on specific mention only. The learned counsel further submitted that even as per employment notification 276, 277 and 278 issued by the BHEL, it was clearly stated that the selected candidates would be entitled for leave as per the rules of the company. The applicable Rules were those issued by Trichy Unit and therefore the TEAS were governed by the benefits stipulated in the Note dated 29.10.2005. The learned counsel further submitted that it was only by way of circular dated 10.06.2008 that the BHEL leave rules were made applicable to appointments on or after 25.06.2008 and that the circular had no retrospective effect. The said circular stated that for those appointed prior to 25.06.2008, the unavailed leave accrued upto 24.06.2008 as temporary employees was permitted to be carried forward as non-encashable earned leave. It was further submitted that the leave entitlement by circular dated 12.09.2008 for those employees who had not been absorbed as



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on 25.06.2008, the leave entitlement for balance period of temporary service from 25.06.2008 was made at par with those appointed on 25.06.2008. The learned counsel summed up the arguments by stating that all benefits approved under the Corporate Circular dated 12.02.2009 were duly provided to TEA's and hence they were not entitled to claim wage arrears and the benefits from the date of notional absorption. The TEA's had received all the benefits and hence the TEA's were estopped from challenging the change in policy with respect to the period of temporary employment. The learned counsel further submitted that the CGIT i.e. the Labour Court had considered all the issues in proper prospective and so the same did not call for any interference.

8.I have heard both the learned counsels and I have perused the entire voluminous records placed before this Court.

9.The pivotal issue to be considered is whether the TEA's are entitled to claim wage arrears and other benefits consequent to the wage revision with effect from 01.01.2007 from the date of their notional absorption.



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10.The admitted facts are that under Ex.W1 dated 14.05.1973, the composition, the rules and procedures and the terms of reference of the Joint Committee were formulated for BHEL and HEIL by way of an agreement. By Circular dated 25.11.1980 (Ex.W2) guidelines for regulation of salary of the employees appointed on daily rated/NMR basis were laid. In the said circular, the period of temporary employment was given as 1 year with 6 months service on daily rated basis and 6 months on consolidated wages basis. The temporary employment period of 1 year was changed to 2.5 years with 1.5 years on daily rated basis and 1 year on consolidated wage, by IOM dated 18.04.1998 (Ex.W3). By Corporate Circular dated 01.04.2008 (Ex.W18), the period of temporary employment was restored to 1 year in tune with the circular dated 25.11.1980. A Memorandum of Agreement by the Joint Committee of BHEL was signed on 30.12.2009 for revision of wages with effect from 01.01.2007 (Ex.W30).

11.According to the respondent no recruitment took place in the Trichy Division between 1985 to 2004. On 22.05.2005, the employment notification No.276 was issued for temporary employment of Artisans Grade IV. In the said employment notification the temporary period of employment was mistakenly



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mentioned as 1 year instead of 2.5 years. However in the communication sent for written test and the offer of appointment letter issued to the selected candidates a clause was added stating that the temporary employment period would be 2.5 years and on completion of the same they would be absorbed. It is pertinent to note here that 119 artisans were recruited and they joined from 29.10.2005 onwards. On 05.09.2005, the office order was issued to all 119 selected candidates that they would be entitled to Casual Leave and Earned Leave as per the leave rules of the company. On 14.10.2006 employment notification 277 was issued wherein the temporary period was specifically stated as 2.5 years, under this notification 250 TEA's were selected and they all joined from 29.01.2007 (Ex.W13) onwards. Under the employment notification 278 dated 15.02.2007, 350 candidates were selected and they joined service on 16.04.2007 onwards. In the employment notification 278, the period of temporary employment was stated as 2.5 years.

12.It is the submission of the learned counsel for the petitioner that in the employment notification No.276 dated 22.05.2005 the period of temporary employment was given as 1 year, but it was subsequently changed in the call



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letters for written examination and offer of appointment letters. The learned counsel submitted that there could not be subsequent correction of period of temporary employment and therefore the change made was invalid.

13.The learned counsel countering the aforesaid argument relied on the Judgment of the Hon'ble Supreme Court in the case of ***Jai Singh Dalal and Others Vs. State of Haryana and Another*** reported in ***1993 Supp (2) Supreme Court Cases 600*** and submitted that the error in the notification which was contrary to the rules could be corrected even during the recruitment process. In ***1993 Supp (2) Supreme Court Cases 600***, the Hon'ble Supreme Court held that the “State Government which has the power to specify the method of special recruitment by notification has also the inherent power to revise the same if it for good reasons considers the same necessary”. The Hon'ble Supreme Court further held that “the authority which has power to specify the method of recruitment must be deemed to have the power to revise and substitute the same in the same manner”. Applying the said principle to the facts of the case, it is seen that in the employment notice No.276 the period of temporary employment was erroneously mentioned as 1 year contrary to the IOM dated 18.04.1998 and therefore, the



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respondent corrected the mistake in the communication for written examination and even in the employment offer letter which was admittedly not opposed or objected to by the TEA's at the time of appointment. It is further trite in law that the candidates selected for appointment do not have vested right to appointment. While so, the contention of the petitioner cannot be countenanced.

14. The learned counsel for the petitioner submitted that the change in period of temporary employment by the IOM dated 18.04.1998 was illegal and void in as much as the approval of the Joint Committee was not obtained and also because it was not changed by a circular, but was changed only by IOM. In my view the said objection need not detain this Court much. The TEA's were selected on the terms and conditions mentioned in the employment notice, communication for written examination and the offer of the appointment letters wherein the period of temporary service was stipulated as 2.5 years. The TEA's having joined the respondent without any demur, whisper or objection are estopped from questioning the same. In my view, the rule of estoppel clearly applies to the facts of the case, because the TEA's participated in the entire selection process and succeeded in getting appointment on the basis of the appointment letters which



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contained the terms and conditions of employment. The TEA's having failed to raise any objections at that time and having taken the benefit of appointment cannot be allowed to challenge the change in policy that too after years of joining service. In this regard the following can be usefully referred to.

“37.Lord Campbell in Cairncross v. Lorrimer, 3 LT 130

held that

.... generally speaking if a party having an interest to prevent an act being done had full notice of its being done, and acquiesce it, so as to induce a reasonable belief that he consents to it and the position of the others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous license.”

15.Following the aforesaid the Hon'ble Supreme Court in the case of P.S.Gopinathan Vs. State of Kerala and Others reported in (2008) 7 SCC 70 held as follows:

“44.....Apart from the fact that the appellant accepted



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his posting orders without any demur in that capacity, his subsequent order of appointment dated 15th July, 1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the appellant is estopped and precluded from questioning the said order dated 14th January, 1992.”

16.Hence, in my view, the Labour Court was justified in rejecting the contention of the petitioner that in the absence of the approval of the Joint Committee the period of temporary employment ought not have been enhanced to 2.5 years. As rightly pointed out by the Labour Court when the issue was raised most of the TEA's had completed the temporary employment period of 2.5 years. The Labour Court rightly stated that the respondent having accepted the terms and



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conditions of employment cannot turn around and claim that the very condition upon which they were appointed was not a valid one.

17.The other question that remains for consideration is whether the TEA's covered by the employment notifications 276, 277 and 278 are entitled to wage arrears as claimed by them from the date of completion of 1 year temporary service.

18.As earlier pointed out, initially the period of temporary service was fixed at 1 year and later it was enhanced to 2.5 years and then again on 01.04.2008, it was restored to 1 year. The TEA's on the basis of the circular dated 01.04.2008 which restored the period of temporary services to 1 year contend that they are entitled to arrears of wages from the date of completion of 1 year temporary service. It is seen that in the circular dated 01.04.2008, the grievance of the TEA's was considered and by Clause 6 of the circular special dispensation was allowed. As a special dispensation service weightage of 1 year service was allowed for their past services which was to be considered at the time of their promotion but no monetary benefits were allowed. It is also pertinent to note here that the said circular was issued in pursuance of a Joint Committee meeting held on



22.08.2007, while the issue of period of temporary service was discussed. If really the intention was to extent monetary benefits, the same would have been incorporated.

19. Be that as it may, even the said circular was superseded by circular dated 12.02.2009. The background of the said circular was that representations were received from employees that the inter-se seniority between different batches of Artisans had been disturbed due to the Corporate Circular dated 01.04.2008. The representations were examined and in order to restore the inter-se seniority between different batches it was decided to supersede the circular dated 01.04.2008 and the consequent IOM's dated 25.06.2008 and 04.06.2008. In the circular dated 12.02.2009, in respect of TEA's who joined the service of the respondent on or after 18.04.1998 against the sanctioned vacancies the following had been decided and the relevant paragraphs are extracted hereunder:

3.1) The temporary employees, who have completed one year on daily rated/consolidated wages, may be deemed to be notionally absorbed in A-3 grade as Artisan Grade IV on the date on which they completed 1 year as temporary employees.

3.2) In regard to regulation of promotions, their future



career progression would be regulated from the date of their notional absorption in the company as per company's promotion policy. They would be eligible for consideration for promotion to the next higher grade i.e., from Artisan Gr. IV (A3 grade) to Artisan Gr.III (A4 grade) after completing 3 years as per the existing promotion policy including standard date of promotion, reckoning of eligibility with respect to prescribed cut-off dates etc., **As mentioned above, their eligibility for consideration for promotion would be counted from the date of their notional absorption.**

3.3) In regard to regulation of pay fixation and arrears for past period, the pay would be notionally fixed in the regular scale of Artisan Gr. IV, at the minimum of the grade on the date of their notional absorption. Their notional pay progression may be worked out till June, 2008. **The same treatment will be given in the revised scale, after the wage revision due from 01.01.2007 is implemented.**

3.4) No monetary benefits for past period upto June, 2008, will accrue to such of these employees on account of the application of above dispensation. However, the financial benefits will accrue to them from June, 2008 onwards. In other words, whatever has been paid to them till June, 2008 will remain and they will be given the monetary benefits from June, 2008 onwards based on notional pay fixation & progression.



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20. The implementation of the provisions of the above circular were to be done in 2009 promotions and the service weightage of one year which was already availed were to be suitably adjusted at that time of 2009 promotions. It is pertinent to note that in clause 3.3 referred above with respect to pay fixation and arrears for the past period, it was clearly stated that the pay would be notionally fixed in the regular scale of pay of Artisan Grade IV at the minimum of the grade on the date of their notional absorption. Their notional pay progression would be worked to June, 2008. It was specifically stated that the same treatment was to be given in the revised scale after the wage revision due from 01.01.2007 was implemented. From the reading of the said clauses it is clear that the monetary benefits or arrears for past period on wage revision from 01.01.2007 was never contemplated.

21. The petitioner counsel's next contended that the memorandum of agreement dated 30.12.2009 superseded the circular dated 12.02.2009. According to the learned counsel the Joint Committee for BHEL in the memorandum of agreement agreed that the memorandum of agreement (MOA) covered all regular



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workmen from categories A1/B1 to A11/B11 grades, who were on the rolls of the company as on 31.12.2006.

22.The said contention of the learned counsel is untenable because in the very same clause relating to coverage it was stated that those who joined as regular employees on 01.01.2007 or after would be governed by paragraph No.7 of the MOA. Paragraph No.7 of the MOA reads as follows:

7.1) The employees who have joined the services of the company in the regular salary grades on or after 01.01.2007 will be deemed to have joined in the new wage structure.

7.2) Employees who have been regularized between 1.1.2007 and upto 31.12.2009 will also be granted 2 ½ (two and half) increments of @3% i.e. total 7 ½% of revised basic pay w.e.f. the date of their regularization as a special one time dispensation.

23.The said clause 7.1 relates to employees who joined the service of the company on regular salary grades on or after 01.01.2007. Admittedly the petitioners did not join the company on regular salary grade on or after



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01.01.2007. Therefore, they are not deemed to have joined in the new wage structure. In my view clause 7.2 refers to the present TEA's who were regularized between 01.01.2007 upto 31.12.2009. The one-time special dispensation was only to provide 2.5 increment (i.e. 7.5% on the revised pay) from the date of their regularisation. As the TEA's were notionally absorbed without any monetary benefits they are covered only by the circular dated 12.02.2009. Therefore in my view the petitioners are entitled to the special dispensation provided under Clause 7.2 of the MOA and the other terms of the MOA are not applicable to the petitioner.

24. One more aspect which needs to be highlighted here is that as rightly contended by the learned counsel for the respondent that all the TEA's recruited against the placement under Advertisement No.276, 277(1), 277(2) & 278, were provided with notional absorption after 1 year, revised notional pay progression, 2.5 increment i.e. 7.5% on the revised pay and monetary benefits with effect from 25.06.2008. The respondent in the synopsis of submissions to illustrate the above gave a sample case for each of the above advertisements. For better appreciation the same is extracted below:



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I.Adv.No.276: (Staff No.2212609)

Date of joining	Original date of absorption (2 ½ yrs)	Notional absorption in view of Circular dt 12/02/2009		Notional 2007 wage revision progression		Notional first increment		Monetary benefits given w.e.f.
		Date	Basic (Rs.)	Date	Basic (Rs.)	Date	Basic (Rs.)	
05/09/05	05/03/08	05/09/06	4800/-	01/01/07	12,580/- (with 2.5 increment)	05/09/07	12,960	25/06/08 (Rs.13,350)

II.Adv.No.277(1) : (Staff No.2212803)

Date of joining	Original date of absorption (2 ½ yrs)	Notional absorption in view of Circular dt 12/02/2009		Notional 2007 wage revision		Monetary benefits given w.e.f.
		Date	Basic (Rs.)	Date	Basic (Rs.)	
16/10/2006	16/04/2009	16/10/2007	4800/-	16/10/2007	12,580/- (with 2.5 increment)	25/06/2008 (Rs.12,580/-)



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III.Adv.No.277(2) : (Staff No.2213060)

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Date of joining	Original date of absorption (2 ½ yrs)	Notional absorption in view of Circular dt 12/02/2009		Notional 2007 wage revision		Monetary benefits given w.e.f.
		Date	Basic (Rs.)	Date	Basic (Rs.)	
29/01/2007	29/07/2009	29/01/2008	4800/-	29/01/2008	12,580/- (with 2.5 increment)	25/06/2008 (Rs.12,580/-)

IV.Adv.No.278 : (Staff No.2215136)

Date of joining	Original date of absorption (2 ½ yrs)	Notional absorption in view of Circular dt 12/02/2009		Notional 2007 wage revision		Monetary benefits given w.e.f.
		Date	Basic (Rs.)	Date	Basic (Rs.)	
16/04/2007	16/10/2009	16/04/2008	4800/-	16/04/2008	12,580/- (with 2.5 increment)	25/06/2008 (Rs.12,580/-)

25.From the above statement it is clear that the TEA's received the benefits



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as per the circular dated 12.02.2009. The TEA's having received the benefits cannot now turn around and say that the circular is not applicable to them. The equitable principles of estoppel and acquiescence are clearly attracted. In this regard the admission of the Joint Secretary of the petitioner's Union is referred to.

“The employees who were recruited as per Employment Notice Nos.277 and 278 were regularized after 01.01.2007. The employees who were recruited as per Employment Notice No.276 were regularized as per Ext.W29 w.e.f. 05.09.2006. as per Ext.W31 the benefit mentioned in Clause 7.2 which is 2.5 times of increment was given to the employees. That benefit has been received by us without protest. We have not given any representation at that time. As per Annexure – IV of Ext.W31 our pay scales have been fixed. It is not correct to say that we have raised the issue only in 2013 after having received all the benefits in 2009.”

26.It is therefore clear that the petitioners admittedly received the benefits given under the circular dated 12.02.2009 and the MOA dated 30.12.2009 and the



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Circular dated 06.02.2010. Having received all the benefits the petitioners are estopped from claiming arrears of wages on absorption on completion of temporary service of 1 year.

27.The learned counsel for the petitioner further submitted that the petitioners were entitled to leave as per the leave rules of the company on absorption as regular employees after one year of temporary service. The petitioners were entitled to carry forward facility of unavailed leave which could be accumulated and also for pay equivalent to the unavailed part of leave which could not be carried forward i.e. Casual leave and optional holiday. Though the said issue was not referred for adjudication before the Labour Court, the Labour Court considered it as a part of the claim for the benefits of absorption of regular employees after reduction of the temporary period of one year.

28.According to the petitioners, the Leave Rules from the personal manual of the BHEL, which was marked as Ex.C2 of the year 1997 applies to the petitioners. The petitioners counsel submitted that Ex.C1, note was issued by the BHEL Trichirappalli Human Resource Management after the TEA's were



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recruited. The TEA's were seeking clarification on the entitlement and eligibility as far as the benefits were concerned and because the personnel manual was silent on this aspect Ex.C1 guidelines were issued. The learned counsel submitted that Ex.C1 note was issued on the misconception that there was no clarification in the personal manual on leave entitlement. The learned counsel for the respondent on the other hand submitted that it is only the special leave rules of the personal manual that apply to the temporary and casual employees.

29.Let me now examine the BHEL Leave Rules from the personal manual.

Coverage Clause 1 and sub clause 1.1 reads as follows:

“1.1) The 'BHEL Leave Rules' shall apply to all regular employees of the Company. The provisions of leave rules as specifically provided also apply to Probationers and Trainees/Apprentices (other than Apprentices under the Apprentices Act 1961) and Casual / Temporary employees.”

30.From the above extract of the leave rules, it is seen that under the coverage clause the BHEL leave rules apply to all the regular employees of the



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company. The provisions of leave rules as specifically provided alone apply to Probationers and Trainees/Apprentices (other than Apprentices under the Apprentices Act, 1961) and Casual/Temporary employees.

31.As rightly contended by the respondents counsel it is clear that for TEA's rules specifically provided are only applicable. The special rules are found in clause 3.2.8. The Special Rule in clause 3.2.8 reads as follows:

3.2.8 Temporary/Casual Employees:-

The number of years of service for purpose of calculation of leave entitlements of temporary / casual employees who are subsequently absorbed in the regular service shall be reckoned from the date of their absorption in regular service only. The leave, remaining at the credit of such employees at the time of absorption cannot be carried forwards on their absorption as regular employees. In respect of those covered under Shops & Establishment Act, leave entitlement as provided under the Act will be applicable.



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32.The said clause speaks of calculation of number of years of service for the purpose of leave entitlement and the date from which it has to be reckoned on subsequent absorption. Therefore the Trichy Division issued the circular Ex.C1 (29.10.2005) laying guidelines regarding leave facility. The guidelines stated that the temporary employees were eligible for 7 days leave for the current year and regarding Earned Leave, after completion of 1 year one day non-encashable earned leave could be taken for every 20 working days. As far as carry forward facility of earned leave was concerned it was stated that within stipulated period of 2.5 years of service, the same could be allowed. But no leave would be allowed to be carried forward on regularization. Thus it could be seen from this that carry forward facility was limited to the temporary period and could not be extended beyond the date of absorption. Therefore, it is clear that as far as the TEA's are concerned it is only the note dated 29.10.2005 issued by the Trichy BHEL which governs the various TEA's. According to the respondent Ex.C1 (29.10.2005) was applicable to those temporary employees who were appointed upto 25.06.2008.

33.In the light of the above, I am of the view that the finding of the Labour Court that the TEA's were to be governed by the circular dated 29.10.2005 with



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regard to leave entitlement policy cannot be faulted. The Judgments relevant to the facts of the case have been referred to and the Judgments relied on by the petitioner (i.e.) Mahabir Auto Stores and Others Vs. Indian Oil Corporation and Others reported in MANU/SC/0191/1990 and E.P.Royappa Vs. State of Tamil Nadu and Others reported in MANU/SC/0380/1973 in my considered view do not apply to the facts of the case.

34.In view of the above discussions, I find no merit in the writ petition and the same is dismissed. However, there shall be no order as to costs.

19.07.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-speaking order
ah

To

34/36



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1. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
1st Floor 'B' Wing,
Shastri Bhavan, Chennai-6.
2. The Executive Director,
M/s. Bharat Heavy Electricals Limited,
Tiruchirappalli-620 014.
3. BHEL Mazdoor Sangam (BMS),
Rep. by its General Secretary,
G.Sankar,
Regn. No. 494/TRI
Opposite to No. 79 Building
Bharat Heavy Electricals Limited,
Tiruchy- 620 014.

N.MALA.J.

ah



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PRE-DELIVERY ORDER IN
W.P.No.1405 of 2018

ORDER DELIVERED ON
19.07.2024